THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.666 & 667 OF 2004

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COMMON ORDER:

These two writ petitions, which involve common questions of fact and law, are heard together and decided by this common order.

In W.P.No.666 of 2004, petitioner seeks a mandamus declaring G.O.Ms.No.212 Transport Roads and buildings TR-II dated 22.11.2003 whereunder three new routes in Nellore District on the mofussil service were declared as formulated by the Government under Section 68 (3)(ca) of the Motor Vehicles Act, 1988 (for short "the Act") as arbitrary and illegal.

The petitioner claims to have made an application before the Regional Transport Authority, Nellore for grant of a pucca stage carriage permit to ply on the town service route, Venkateswarapuram to Kakutur. However, the said request was rejected by order dated 23.03.1996, and questioning the same, he preferred a statutory appeal being A.P.No.993 of 1996 before the State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad. Pending appeal, W.P.No.22074 of 1996 was filed seeking to permit him to operate his vehicle on the route in question. By virtue of an interim order granted in W.P.M.P.No.2224 of 1996, petitioner was allowed to operate his vehicle. While so, A.P.No.993 of 1996 was allowed by the State Transport Appellate Tribunal by order dated 30.06.1998, thereby, setting aside the order of the Regional Transport Authority dated 23.03.1996 and remanding the matter for consideration afresh, after calling for joint survey report. In pursuance thereof, the Motor Vehicle Inspector conducted a joint survey and submitted his report dated 8.03.2001. However, once again the application of the petitioner for grant of pucca stage carriage permit was rejected by order dated 23.01.2002, on the ground that the route in question was not formulated by the Government under Section 68(3) (ca) of the Act. Though petitioner preferred an appeal in A.P.No.332 of 2002 against the said order, the same was dismissed by the State Transport Appellate Tribunal by order dated 29.09.203. The said order is under challenge in W.P.No.667 of 2004.

I have heard learned counsel for both parties, and perused the material on record.

Learned counsel for the petitioner contended that the ground on which application of petitioner was rejected for grant of pucca stage carriage permit on the route in question was untenable and was not in accordance with law. Learned counsel submits that the fact that in the first instance, respondent No.2 never raised an objection that the route was not formulated under Section 68(3)(ca) of the Act, itself shows that the route in question was an existing route. Learned counsel also points out that the Tribunal while allowing A.P.No.993 of 1996 remanded the matter only for the purpose of conducting joint survey in the presence of appellant (writ petitioner) and officials of the A.P. State Road Transport Corporation, so as to decide whether there was any overlapping in terms of G.O.Ms.No.92 dated 23.02.1991, under which overlapping of 5 Kms in respect of town service routes was permissible. Hence, according to learned counsel, it is not open to the Regional Transport Authority to raise a new objection that the route was not formulated under Section 68(3)(ca) of the Act. At any rate, since the application of petitioner for formulation of a new route under Section 68(3)(ca) of the Act is still pending before the Government, the Tribunal ought not to have dismissed the appeal on the sole ground that the route is not formulated under Section 68 (3)(ca) of the Act.

Respondent No.3-A.P. State Road Transport Corporation in its counter-affidavit stated that the length of the route in respect of which petitioner made an application for grant of pucca stage carriage permit was 17.6 Kms., and it overlaps the notified routes approved in G.O.Ms.No.92 dated 23.02.1991 and G.O.Ms.No.1151 dated 16.11.1975 to an extent of 16 Kms under each scheme. Since overlapping on the notified route is more than limits permitted under the approved scheme, the petitioner is not entitled for grant of permit on the route in question and the Regional Transport Authority had rightly rejected the same. That apart, even the request of the petitioner for formulating the route in question under Section 68(3)(ca) of the Act was rejected by the Government vide G.O.Ms.No.212 dated 22.11.2003, and therefore, writ petition is misconceived and liable to be dismissed.

It is not in dispute that as per Section 68(3)(ca) of the Act, the Government alone is competent to formulate routes for plying stage carriages. In exercise of the said power the Government has to consider formulation of a route as and when the need is brought to its notice, even by way of an application by an intended transporter.

However, it is not in dispute that unless such a route is formulated by the Government, no stage carriage permit can be granted.

In the case on hand, petitioner initially, made an application in the year 1996 for grant of stage carriage permit to ply on Venkateswarapuram to Kakatur (via) Ranganayakulapet, Railway Station Point, Atmakur Bus Stand and etc., in Nellore. There is nothing on record to show that by the date of his application the said route was formulated by the Government under Section 68(3)(ca) of the Act. The Regional Transport Authority, who is the competent authority to grant stage carriage permits, while rejecting the application of petitioner by order dated 23.03.1996, though did not raise any objection that no route was formulated under Section 68(3)(ca) of the Act, held that since there was overlapping exceeding 5 Kms on N.H.5, which was prohibited under G.O.Ms.No.92 dated 23.02.1991, stage carriage permit, as sought by the petitioner, cannot be granted. The said order was set aside by the State Transport Appellate Tribunal in A.P.No.993 of 1996 and the mater was remanded for consideration afresh only on the ground that the petitioner was not given an opportunity before concluding that there was an overlapping exceeding 5 Kms. Thus, the Tribunal directed Regional Transport Authority to call for a joint survey report and then pass appropriate orders afresh. In pursuance thereof, admittedly, joint survey was conducted in the presence of petitioner as well officers of the Corporation and the report dated 8.03.2001 placed before this Court shows that the route in respect of which petitioner requested stage carriage permit, overlaps on the notified route to an extent of 16 Kms. In the light of the said report dated 8.03.2001, the Tribunal passed orders rejecting the request of petitioner on the ground of overlapping on the notified route exceeding 5 Kms prescribed under G.O.Ms.No.92 dated 23.03.1991 and also on a further ground that the route in question was not formulated by the Government under Section 68(3)(ca) of the Act. Though petitioner preferred an appeal, the same was dismissed by the Tribunal confirming the order of the Regional Transport Authority in view of the admitted fact that there was an overlapping exceeding 5 Kms and that as on the date the route in question was not formulated by the Government under Section 68(3)(ca) of the Act.

Both the above said grounds on which the application of petitioner was rejected are in accordance with law. The learned counsel for petitioner while placing reliance upon a decision of a Full Bench of this Court in W.P.No.17729 of 1990 and batch dated 15.03.2001 contended that overlapping exceeding 5 Kms cannot be made

applicable to town service routes. The said contention cannot be accepted in view of the Judgment of a Constitution Bench of the Supreme Court in **A.P.S.R.T.C. v. Regional Transport Authority**. In the above case, the Supreme Court having considered all the relevant aspects in detail, set aside the Judgment of the Full Bench of this Court and held as follows:

> "In our view, under Exception 2 contained in the note appended to the Scheme, subject-matter of the present appeals, permits can be issued only to existing town services operating o the notified routes. This means only existing operators on the notified routes are eligible for permits. Fresh applications or future applicants are totally ineligible for getting permits for town services operating on notified routes. These appeals are accordingly allowed. The impugned judgment of the full Bench of the High Court is set aside."

In the light of the ratio laid down by the Supreme Court, it is clear that no permits can be granted for town services on the notified overlapping routes. Hence, the order passed by the Regional Transport Authority rejecting application of the petitioner for grant of stage carriage permit on the route in question, as confirmed by the Tribunal, did not suffer from any infirmity warranting interference by this Court, and therefore, W.P.No.668 of 2004 is liable to be dismissed.

So far as W.P.No.666 of 204 is concerned, the only contention raised by the petitioner is that the Government of Andhra Pradesh had erroneously treated the application of the petitioner as a request for formulation of mofussil services route, whereas petitioner sought for formulation of town services route. Thus, it is contended that the said order was passed without application of mind to the relevant facts and without examining the application of petitioner in the light of relevant statutory provisions.

On a careful consideration of the entire material on record, I do not find any substance in the above contention. Petitioner earlier filed W.P.No.5129 of 2003, aggrieved by the inaction on the part of the Government of Andhra Pradesh in considering his application dated 8.04.2002 for formulation of a town service route from Venkateswarapuram to Kakatur (via) Ranganayakulapet, Railway Station Point, Atmakur Bus Stand and etc. The said Writ Petition was disposed of by this Court along with three other writ petitions viz., W.P.No.5111; 5113; and 5126 of 2003, which were filed by three other transporters, who made applications for formulation of mofussil services routes. This Court by a common order dated 3.04.2003 disposed of all the writ petitioners directing the Government of Andhra Pradesh to pass appropriate orders on the applications of petitioners therein with

regard to respective routes within eight weeks. In pursuance of the said order of this Court, the Government having considered four applications of the petitioners therein, including the application of writ petitioner, passed orders vide G.O.Ms.No.212 dated 22.11.2003 formulating three routes as sought by three other applicants, but rejecting the application of petitioner for formulating town service route from Venkateswarapuram to Kakutur on the ground that the said route was affected by the existing routes of A.P. State Road Transport Corporation. It was made clear in the said order that the mofussil route in respect of which other three applicants made applications did not affect the existing routes of A.P. State Road Transport Corporation.

In the light of the joint inspection report which shows that the town services route in respect of which the petitioner made an application overlaps to an extent of 16 Kms with the existing route of A.P. State Road Transport Corporation and having regard to the ratio laid down by the Supreme Court in **A.P.S.R.T.C. v. Regional Transport Authority** (1 supra) that such prohibition applies even to town services routes, I am unable to hold that the order impugned in W.P.No.666 of 2004 in rejecting the application of the petitioner for formulation of town service route in respect of the route in question was erroneous on any ground whatsoever.

For the above said reasons, both the Writ Petitions are devoid of any merit and they are accordingly dismissed. No costs.

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(G. ROHINI, J.)

April 10, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION Nos.666 & 667 OF 2004

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W.P.No.666 of 2004:

Between:

P. Yagnanarayana. .. Petitioner.

And

The Government of Andhra Pradesh,

Transport, Roads & Buildings (Tr.III),

Department, Andhra Pradesh, Hyderabad

And two others. . Respondents.

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